

MAURINE M. CARPENTER

IBLA 94! 325

Decided September 26, 1996

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying exemption from payment of rental fees and declaring four lode mining claims abandoned and void. CMC! 126498 through CMC! 126500, CMC! 207214.

Affirmed as modified.

1. Mining Claims: Rental or Claim Maintenance Fees: Generally—Mining Claims:
Rental or Claim Maintenance Fees: Small Miner Exemption

In order to qualify for a small miner exemption under the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1378-79 (1992), and 43 CFR 3833.1-6(a) (1993), a claimant must hold 10 or fewer mining claims, mill sites, and tunnel sites on Federal lands. Where BLM records disclosed that on Aug. 31, 1993, a mining claimant seeking a small miner exemption held in excess of 10 mining claims on such lands, and where on appeal the claimant failed to provide any evidence to show otherwise, the exemption is properly denied and, in the absence of the payment of rental fees, the claims are properly declared abandoned and void.

APPEARANCES: Maurine M. Carpenter, College Place, Washington, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Maurine M. Carpenter has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated January 31, 1994, denying her an exemption from the payment of rental fees and declaring four unpatented lode mining claims (CMC! 126498 through CMC! 126500 and CMC! 207214) abandoned and void.

On October 5, 1992, Congress passed the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102! 381, 106 Stat. 1378! 79 (1992), a provision of which established that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work

requirements contained in the Mining Law of 1872 (30 U.S.C. 28! 28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. 1378. The Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee on or before August 31, 1993. 106 Stat. 1378! 79.

Congress further mandated that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant * * *." 106 Stat. 1379.

Implementing Departmental regulations provided as follows:

Mining claim or site located on or before October 5, 1992. A nonrefundable rental fee of \$100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of \$200.

43 CFR 3833.1! 5(b) (1993). 1/

The only exemption provided from this annual rental requirement is the so-called small miner exemption, available to claimants holding 10 or fewer mining claims, mill sites, and tunnel sites on Federal lands who meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993). William B. Wray, 129 IBLA 173 (1994).

Where a mining claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay fees in accordance with the Act and regulations results in a conclusive presumption of abandonment. Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994). The Department is without authority to excuse lack of compliance with the rental fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. Id.

Appellant does not assert that she paid rental fees for the claims at issue. Nor is there any evidence to that effect. Rather, on August 27, 1993, using the official BLM form (Form 3830! 1 (June 1993)), appellant filed with BLM a "Certificate of Exemption from Payment of Rental Fee,"

1/ Appellant's claims were located before Oct. 5, 1992.

for the 1993 assessment year commencing at noon on September 1, 1992, and ending at noon on September 1, 1993. ^{2/} By submitting the form, she certified that she "own[ed] ten or fewer mining claims," and had otherwise satisfied the requirements for an exemption.

In its January 1994 decision, BLM stated as follows:

Your exemption, filed on August 27, 1993, was found to be insufficient. 43 CFR 3833.1-6 requires claimants to hold no more than 10 mining claims, mill sites, or tunnel sites by the statutory deadline of the Act, in order to qualify for the exemption.

Since you did not meet the 10-claim requirement, the claims are declared abandoned and void. We are returning your filings. [^{3/}]

The nature of the insufficiency was not set forth in the decision. However, attached to the copy of the certificate in the case file is the original of a document styled "NOTICE," which contains the following preprinted language:

"The information submitted for the small miners exemption is incomplete. * * * The following items are required and we have checked those items which were incomplete or incorrect on your form. Please be sure to verify that Form 3830! 1 is completely and accurately filled out." [Emphasis in original.]

The "NOTICE" contains various statements with space for checkmarks so that BLM may identify incomplete or incorrect information. Two statements—"Completed Form 3830-1 for 1993" and "Completed Form 3830-1 for 1994"—are checked and the following handprinted statement appears thereafter: "Separate forms are required." (Emphasis in original.) One other statement is checked—"All owners or their certified agents must sign the form and include their names and addresses." Following that statement is a handprinted notation: "Our records indicate that Roy F. Carpenter is co-owner. He also needs to sign." ^{4/} There is no indication in the record that a copy of this document accompanied BLM's decision.

^{2/} There is no certificate in the record that pertains to the assessment year beginning at noon on Sept. 1, 1993, and ending at noon on Sept. 1, 1994, i.e., the 1994 assessment year.

^{3/} On appeal, appellant submitted the original of the exemption certificate, which is stamped "FILING RETURNED WITHOUT ACTION." The case record contains a copy of the exemption certificate.

^{4/} On Feb. 8, 1993, appellant informed BLM by letter that Roy L. Carpenter had died in December 1991. However, there is no evidence in the record that appellant informed BLM at that time or at any other time of any change in ownership of mining claims owned by Roy L. Carpenter. In the absence of any evidence to the contrary, we must assume for purposes of our decision that his interest in those claims passed to appellant upon his death.

With regard to BLM's declaration that appellant did not meet the 10-claim requirement, the decision contained no further explanation of what other claims were held by appellant. However, the case record contains a copy of two pages of a BLM computer printout dated "Jun 22, 1993," and styled "CLAIMANT/CLAIM COUNTS," listing Maurine M. Carpenter as the holder of 11 claims in Colorado and Roy F. Carpenter as the holder of 31 claims in the same State. The printout does not identify the claims by name or by recordation number. However, other such printouts in the record, dated February 10, 1993, and November 5, 1993, which do identify claims by name and recordation number, show Maurine M. Carpenter and Roy R. Carpenter as the holders of more than 10 claims each.

On appeal, appellant asserts, in essence, that she owns only nine total claims: six mining claims and two mill sites, and one tunnel site. In support of that assertion, she enclosed a copy of a letter, dated August 20, 1993, which accompanied her payment of \$1,000 in "rental fee[s] for 1993 and 1994" with respect to two other mining claims (CMC! 126495 and 126496), one tunnel site claim (CMC! 201794), and two mill site claims (CMC! 201939 and 201940). In a handwritten letter received by BLM on February 10, 1994, appellant stated: "I have now dropped all these claims except these the six I have paid rental fees on and these four I was denied." (Emphasis added.) She presumably meant to say five, not six, since there is no other evidence that she paid rental fees with respect to any claim other than the five listed in her August 20, 1993, letter.

[1] The fact that appellant may have "dropped" all the other claims by the time she filed her statement in February 1994 does not establish that she was the holder of 10 or fewer claims on August 31, 1993. 5/ BLM's records indicate otherwise. In Lee H. & Goldie E. Rice, 128 IBLA at 140, the Board affirmed a BLM decision denying an exemption where BLM records disclosed on August 31, 1993, that the mining claimants seeking a small miner exemption held in excess of 10 mining claims on Federal lands, and where on appeal the claimants failed to provide any evidence to show otherwise. Rice controls the disposition of this appeal.

In addition, even if appellant held 10 or fewer claims on August 31, 1993, she still failed to comply with the requirements of the Act and regulations. In accordance with 43 CFR 3833.1! 7(d) (1993), appellant was required to file, on or before August 31, 1993, a "separate statement * * * supporting the claimed exemption for each assessment year [it] is claimed." See also 43 CFR 3833.1! 7(b)(1) and (2) (1993). The Board has held that in order to obtain an exemption from the requirement to pay a rental fee separate statements are required for each of the 1993 and 1994 assessment

5/ The regulation which governed rental fee exemption qualifications, 43 CFR 3833.1-6(a) (1993), provided at subsection (2) that "[m]ining claims held by a husband and wife, either jointly or individually, or their children under the age of discretion, shall be counted toward the 10-claim limit."

years. Jesse L. Cleary, 131 IBLA 296, 297 (1994). The certificate filed on August 27, 1993, by appellant pertained only to the 1993 assessment year. No certificate for the 1994 assessment year appears in the record.

We, therefore, conclude that BLM, in its January 1994 decision, properly declared the claims at issue abandoned and void. However, the decision is modified to the extent BLM's declaration is based on a failure to "meet the 10-claim requirement." Failure to meet that requirement is a basis for denying the exemption. Because appellant failed to qualify for a small miner exemption, she was required to pay the rental fee for the claims on or before August 31, 1993. See Lee H. & Goldie E. Rice, 128 IBLA at 141. There is no evidence in the record of proper payment. The claims are properly deemed abandoned and void for that reason.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

Gail M. Frazier
Administrative Judge

